Calendar No. 700

97TH CONGRESS, 2d Session } SENATE { REPORT No. 97-490

AUTHORITY TO CONVEY CERTAIN NATIONAL FOREST SYSTEM LANDS

JULY 1 (legislative day, JUNE 8), 1982.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 705]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 705) to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, having considered the same, reports favorably thereon with amendments to the bill as reported by the Committee on Agriculture, Nutrition and Forestry and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 5, line 12, after the word "lands" the second time it appears, insert the following:

> of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and.

2. On page 6, line 3, strike "approximate value," and insert "approximately equal value,".

3. On page 6, after line 5, add the following:

> The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceeding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System.

4. On page 7, line 22, strike "such conveyance" and insert "any conveyance authorized by this Act".

89-010 O

S313-30

5. On page 7, strike "consistent with the public interest," wherever it appears and insert in lieu thereof "in the public interest,".

6. On page 8, line 11, strike " 'approximate value;' " and insert " 'approximately equal value;' ".

7. On page 8, line 18, strike "System." and insert "System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of Federal lands, within National Recreation Areas.".

8. On page 8, line 19, strike "Sec. 8." and insert "Sec. 8(a)".

9. On page 8, after line 23, insert the following:

> (b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.'.

PURPOSE

S. 705, as amended by the Committee on Energy and Natural Resources, would authorize the Secretary of Agriculture to convey by quitclaim deed certain small parcels of national forest system lands the sale or exchange of which is not practicable under any other authority of the Secretary. The bill as reported from the Energy and Natural Resources Committee would specifically exclude from conveyance under its provisions any lands within the National Wilderness Preservation System, National Wild and Scenic River System, National Trails System, or National Monuments. Sale authority is not authorized for federal lands in National Recreation Areas administered by the U.S. Forest Service although exchange and interchange are permitted.

Parcels that may be conveyed under the bill cannot exceed $150,000 in value. The consideration accepted by the Secretary must be at least equal to the value of any lands being sold or exchanged, or of approximately equal value to any lands being interchanged by the Secretary.

In addition, the bill would require that persons to whom land is conveyed under this authority bear the costs incident to the conveyance. Such persons shall also reimburse the United States for the value of any improvements made to any right-of-way conveyed by this Act. If determined to be in the public interest the Secretary may waive such conveyance costs and the reimbursement requirements. In determining the value of land to be conveyed, the bill authorizes the Secretary, if it is in the public interest, to allow credit for improvements made to the land by any person other than the United States.

The bill would provide that the use of rights-of-way conveyed under this authority would be controlled by State and local law. The Secretary would be authorized to issue regulations as necessary to carry out the provisions of the Act. The bill would also authorize exchanges of national forest system lands with State and local government entities under the provisions of the Act of December 4, 1967. Such exchanges are authorized, however, only if the lands were being utilized by such entities on the date of enactment of this Act. Lands so conveyed may be used for only the purpose for which they were used prior to conveyance.

Background and Need

For a discussion of the Background and Need for S. 705, see pp. 3 to 5 of Sen. Rept. 97–322 of the Committee on Agriculture, Nutrition, and Forestry. The Committee on Energy and Natural Resources concurs with this discussion.

Legislative History

S. 705 was introduced by Senator Domenici on March 12, 1981 and referred to the Committee on Agriculture, Nutrition, and Forestry. A hearing by the Subcommittee on Forestry, Water Resources, and Environment was held on October 22, 1981. On March 31, 1982 the Committee on Agriculture, Nutrition and Forestry reported favorably S. 705 with amendments. On May 27, 1982, S. 705 was re-referred to the Committee on Energy and Natural Resources for 30 days. The Public Lands and Reserved Water Subcommittee held a hearing on S. 705 on June 24, 1982. The Administration supports S. 705 as reported by the Committee on Agriculture, Nutrition, and Forestry. At a business session on June 30, 1982, the Energy and Natural Resources Committee ordered S. 705 favorably reported after adopting several amendments to the bill as reported by the Committee on Agriculture, Nutrition, and Forestry.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on June 30, 1982 by unanimous vote of a quorum present recommended that the Senate pass S. 705, if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, no nays as follows:

YEAS	NAYS
McClure	
Hatfield	
Weicker [1]	
Domenici	
Wallop	
Warner [1]	
Murkowski	
Nickles [1]	
East [1]	
Heinz [1]	
Jackson	
Johnston	
Bumpers	
Ford	
Matsunaga [1]	
Melcher	
Tsongas [1]	
Bradley	

[1] Indicates voted by proxy.

Committee Amendments

During the consideration of S. 705, the Committee adopted nine amendments.

Amendments No. 1 and 2 are intended to clarify the Committee's desire that conveyances by the special form of land transfer defined as "interchange" be at approximately equal value. The Forest Service is expected to use the best available practices and procedures to arrive at the approximation of equal value short of the formal appraisal procedures and steps currently used to determine equal value. The Forest Service has indicated that on a land value basis an interchange would normally be within 95 percent of equal value.

Amendment No. 3 authorized the Secretary of Agriculture to retain those interests in any conveyance which he deems necessary to ensure the protection of the public interest including protection of the scenic, wildlife, and recreation values of the National Forest System and to provide for appropriate public access.

In the case of deeds issued by the Secretary to lands outside of the boundary of units of the National Forest System, the Committee felt the requirement to retain such an interest was unnecessary.

Amendment No. 4 is clarifying in nature. It makes it clear that the Secretary may waive payment by any person of costs incidental to any conveyance authorized by this Act. S. 705 as referred to the Energy and Natural Resources Committee left a question in section 4 as to whether the Secretary's authority to waive payment applied to all conveyances or only applied to the road rights-of-way conveyances. The amendment is intended to ensure that such authority applies to all conveyances under the Act.

Amendment No. 5 is technical in nature.

Amendment No. 6 is conforming in nature. The Secretary is to issue regulations including specification of the definition of and procedure for determining "approximately equal value" for use in interchange conveyances.

Amendment No. 7 adds Federal lands in the National Wild and Scenic Rivers System, National Trails System or the National Forest Monuments along with those lands in the National Wilderness Preservation system which are *not* authorized to be conveyed under the Act. In National Recreation Areas administered by the U.S. Forest Service, Federal Lands may not be sold under the Act, but other forms of conveyance may be used. The Committee added these additional lands in recognition of the special classification afforded them by congressional designation.

Amendment No. 8 is technical in nature.

Amendment No. 9 provides the Secretary with the authority to convey lands to a state, county, or municipal government under the Act of December 4, 1967, but adds a requirement that the lands so conveyed must have been utilized by those entities on date of enactment and further limits the use of such lands to only those purposes for which they were being used prior to conveyance. The amendment does not apply to public school districts or other public school authority under the Act of December 4, 1967. The committee expects the U.S. Forest Service to assess utilization by reviewing physical or actual use.

SECTION-BY-SECTION ANALYSIS

Section 1 defines the terms "person", "interchange", and "Secretary". The term "person" includes States or any political subdivisions or entities thereof, such as county and municipal governments, independent school districts and similar entities. The term "interchange" means a land transfer involving the change of titles to or interests in lands of approximately equal value between the Secretary and another person under such regulations as the Secretary may prescribe.

Section 2 authorizes the Secretary of Agriculture, when in the public interest, to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in the national forest system lands described in section 3. As consideration for such lands the Secretary is authorized to accept other lands, interests in lands, or cash, or any combination thereof, which in the case of a sale or exchange is at least equal in value to the lands being conveyed by the Secretary. In the case of conveyance by interchange the consideration must be approximately equal to the value of the lands being conveyed by the Secretary. The Secretary shall retain an interest in any lands conveyed to ensure protection of the public interest and public access, when he deems necessary.

Section 3 identifies the lands which may be sold, exchanged, or interchanged by the Secretary under section 2 as those the sale or exchange of which is not practicable under any other authority of the Secretary, those which the Secretary has determined to have a value of not more than $150,000, and those which are (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents and which the Secretary has determined, because of size and location, are not subject to efficient administration; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and also in good faith relied upon an erroneous survey, title search, or other land description indicating that there was no such encroachment; or (3) road rights-to-way reserved or acquired which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States subject to the first right of abutting landowners to acquire the rights-of-way.

Section 4 requires that persons to whom land is conveyed must bear all reasonable costs, as determined by the Secretary, of administration, survey, and appraisal incidental to the conveyance. In addition, any person to whom a right-of-way is conveyed is required to reimburse the United States for the value of any improvements to the right-of-way made by the United States. In cases where the Secretary determines it would be in the public interest to do so, the Secretary is authorized to waive payment of such incidental costs or reimbursement for any conveyance authorized by the Act. This section also provides that, in determining the value of any lands or interest in lands to be conveyed, the Secretary may exclude from such determination the value of any improvements to the lands made by persons other than the Government, when the Secretary determines that such exclusion would be in the public interest.

Section 5 provides that conveyance of any road rights-of-ways shall not be construed as permitting any designation, maintenance, or use of the rights-of-way for road or other purposes except to the extent permitted by State or local law.

Section 6 directs the Secretary to issue regulations to carry out the provisions of the Act, including specification of: (1) the criteria to be used in determining what constitutes the public interest; (2) the definition of and the procedure for determining "approximately equal value"; and (3) factors relating to location or size to be considered in determining the lands interspersed with mineral patents that are eligible to be conveyed under section 3 the bill.

Section 7 provides that nothing in the bill shall authorize conveyance of Federal lands within the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Sale authority is not authorized within National Recreation Areas but other forms of conveyance are permitted.

Section 8 amends the Act of December 4, 1967, to authorize the Secretary to accept cash equalization payments, in connection with exchanges of national forest system lands, by State, county, or municipal governments where the lands offered in exchange do not equal the value of the Federal lands. Presently, that Act only authorizes cash equalization payments in connection with exchanges with public school districts. As reported, the bill provides that lands may be conveyed to States, counties or municipal governments wide this authority only if they were being utilized by those entities on the date of enactment of this Act. Lands so conveyed may only be used by such entities for the purposes they were being used before conveyance.

Cost and Budgetary Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., July 1, 1982.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 705, a bill to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, as ordered by the Senate Committee on Energy and Natural Resources, June 30, 1982.

This bill authorizes the Secretary of Agriculture to sell, exchange, or interchange certain small parcels of National Forest Service land. The lands involved include parcels valued at a maximum of $150,000 which are: forty acres or less and are inefficient to manage because of location or size; ten acres or less and have been innocently encroached upon due to erroneous non-federal surveys; and unnecessary federally reserved road rights-of-way surrounded by non-federal lands. Based on information from the National Forest Service, it is estimated that

the value of the lands that will be sold or exchanged by the end of fiscal year 1986 is approximately $1.9 million (in current prices). Assuming the transactions will occur over the next five years and that 90 percent of these transactions are land sales (and 10 percent are land exchanges), receipts to the federal government resulting from enactment of this legislation will be approximately $0.2 million in fiscal year 1982, $0.3 million in fiscal year 1983, $0.6 million in fiscal year 1984, $0.6 million in fiscal year 1985, and $0.7 million in fiscal year 1986.

The bill also authorizes states, counties, and municipal governments to equalize land values with cash for certain proposed land exchanges with the Secretary of Agriculture. To be eligible for this provision, the federal land involved must not exceed eighty acres and must currently be used by the local governments involved. Based on information from the National Forest Service, net receipts to the federal government that will be realized as a result of enactment of this title will be less than $0.3 million per year.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Department of Agriculture setting forth Executive agency recommendations relating to S. 705 are set forth below:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 30, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 705, a bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes," as reported by the Senate Agriculture Committee, April 19, 1982.

The Department of Agriculture recommends that S. 705 be enacted.

S. 705 would authorize the Secretary of Agriculture to sell, exchange, or interchange, all right, title and interest, including the mineral estate, to certain National Forest System lands when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold, exchanged, or interchanged. Any conveyance could be made to a State or political subdivision of a State as well as to private parties. Payment for the lands could be in cash, interests in land, or other lands and would be of equal or approximately equal value.

The lands which would be sold, exchanged or interchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous sur-

vey, title search or land description and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States. The tracts which would be disposed of could not have a value of more than $150,000. In determining value of the tract, the Secretary could waive the value of any improvements made by any person other than the Government.

S. 705 would require persons receiving these lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements made by the United States. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

S. 705 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. S. 705 would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the Western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which is later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. There are an estimated 50,000 title claims cases existing on National Forest System lands—a large number of which involve good faith trespass due to faulty private surveys. These occur throughout the United States. These are generally of small size, most involve less than 1 acre.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona.

Conveyance by interchange is a new concept of Federal land disposal. Interchange as proposed in S. 705 would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private land which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705.

Section 8 of S. 705 would amend the Act of December 4, 1967 (81 Stat. 531) which authorizes the Secretary of Agriculture, when negotiating a land exchange with a public school district under the General Exchange Act of 1922, to accept cash in lieu of land for a portion or all of the value of the selected Federal land. This amendment would broaden the 1967 Act and authorize cash equalization in exchanges of National Forest System land with State and local government entities in addition to the present authority for public school districts. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by S. 705. All land exchanges with States, counties and municipal governments, in addition to those with public school districts, would be affected by this section.

No additional appropriations would be required to administer the provisions of S. 705 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 705 as amended.

S. 705 is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses. Conveyance of Government land to private parties, or to State, county, or municipal governments under the legislation would be voluntary. Furthermore, there would be significant advantages expected to accrue to the private entities affected by the legislation in providing for the resolution of title claims through expedited administrative actions rather than through litigation or private relief legislation. Upon adoption of regulations by the Secretary establishing the procedures to be followed in making conveyances, the affected private entities would be free to choose whether or not to enter into a sale, exchange, or interchange with the Secretary.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if additional paperwork would result from the enactment of S. 705.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Act of December 4, 1967

AN ACT To facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever an exchange of land is proposed by a *State, county, or municipal government or* public school district or other public school authority under the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485, 486), or other authority under which the Secretary of Agriculture is authorized to exchange national forest lands or other lands administered by the Forest Service, if the *State, county, or municipal government or* public school authority proposing the exchange has insufficient land to offer, the exchange may be completed upon deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. Any amount so deposited shall be covered into a special fund in the Treasury which when appropriated shall be available until expended by the Secretary of Agriculture for the acquisition of lands in the same State as the selected lands and which are determined by him to be suitable for the same purposes as the selected lands. Lands so acquired shall have the same status and shall be subject to the same laws, regulations, and rules as the selected lands.

The provisions of this Act shall not be applicable to the conveyance in exchange of more than eighty acres to any one *State, county, or municipal government or* public school district or other public school authority. *Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance.*

○